

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:15-CR-169-BO

UNITED STATES OF AMERICA)	<u>FINDINGS OF FACT AND</u> <u>CONCLUSIONS OF LAW</u>
v.)	
GERALD WAYNE TIMMS)	

This cause comes before the Court following a bench trial before the undersigned on May 10, 2016, at Raleigh, North Carolina. Defendant was indicted on May 27, 2015, of one count of knowing possession of a prohibited object by an inmate, to wit, an object that is designed and intended to be used as a weapon, in violation of 18 U.S.C. § 1791(a)(2). Defendant waived his right to a jury trial pursuant to Rule 23(a) of the Federal Rules of Criminal Procedure, to which the government expressed its consent. [DE 55 & 56].

At the close of the government's evidence, defendant made an oral motion for judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure. The Court took the motion under advisement, and defendant renewed his motion at the close of all of the evidence. Viewing the facts in the light most favorable to the prosecution, defendant's motions under Rule 29 are denied. *See United States v. Sawyer*, 294 F.2d 24, 31 (4th Cir. 1961); *United States v. Alvarez*, 351 F.3d 126, 129 (4th Cir. 2003).

DISCUSSION

18 U.S.C. § 1791 provides that "whoever being an inmate of a prison, makes, possesses, or obtains, or attempts to make or obtain, a prohibited object; shall be punished . . ." 18 U.S.C. § 1791(a)(2). An inmate of a prison is a person who is housed at a "a Federal correctional,

detention, or penal facility or any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General.” *Id.* at § 1791(d)(4). A prohibited object is defined to include “an object that is designed or intended to be used as a weapon or to facilitate escape from a prison.” *Id.* at § 1791(d)(1)(B). “[A] conviction under § 1791(a)(2) requires proof that the inmate *knowingly* possessed the prohibited object.” *United States v. Mobley*, 687 F.3d 625, 631 (4th Cir. 2012) (emphasis in original).

FINDINGS OF FACT

Having heard the evidence and testimony in this matter, the Court makes the following findings of fact pursuant to Rule 23(c) of the Federal Rules of Criminal Procedure:

- (1) That defendant was an inmate of a prison, namely the Federal Correctional Institution at Butner as a civil detainee pursuant to 18 U.S.C. § 4248; and
- (2) That defendant knowingly possessed a prohibited object; specifically, that defendant possessed a pen which had been altered to include a blade attached to the end of the pen, and that that object would be commonly referred to as a “shank” which is a weapon.

CONCLUSION

The Court holds that the government has satisfied its burden to prove beyond a reasonable doubt that defendant is GUILTY of the charge in the indictment. The clerk is DIRECTED to enter judgment accordingly and this matter will be set for sentencing during the Court’s August 8, 2016, term. Defendant’s motions for judgment of acquittal are denied.

SO ORDERED, this 11 day of May, 2016.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE